

REMARKS

Claims 36 and 37 are added, and therefore claims 14 to 37 are now pending.

Reconsideration is respectfully requested based on the following.

With respect to paragraph eighteen (18), Applicants thank the examiner for indicating that claims 20 to 23, 25, and 29 to 34 contain allowable subject matter. While the rejections may not be agreed with, to facilitate matters, claims 20, 21 and 25 have been rewritten to include the features of their base claims. Accordingly, claims 20, 21 and 25 and the corresponding dependent claims 22, 23, and 29 to 34 are allowable, and it is therefore respectfully requested that the objections be withdrawn.

With respect to paragraph one (1), please replace the Figures 1 and 4 with the Figures 1 and 4 on the two accompanying Replacement sheets, which include Figures 1 to 4. Labels have been added to the blocks as suggested by the Examiner. No new matter is added and the Figures are supported by the present application, including the specification. Approval and entry are respectfully requested.

With respect to paragraph two (2), the Substitute Specification has been corrected as suggested at lines 1 and 2 of page 3. Approval and entry are respectfully requested.

With respect to paragraphs three (3) and four (4), as to the written description objection/rejection (it is unclear what the Examiner intended) and the informalities objections as to claims 14 to 35, the objections/rejections are traversed.

As to the specific issue raised, claim 14 does not merely recite “determining a probability”, as suggested but instead specifically recites the feature of “determining a probability of the image movement occurring without the additional movement at different positions of an image”. It is respectfully submitted that this is abundantly clear to a person having ordinary skill in the art, especially in view of the specification. Accordingly, claims 14 to 35 are not believed to require amendment as suggested in the Office Action.

As to Section 112, first paragraph, this Section requires that the “specification shall contain a written description of the invention . . . in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains . . . to make and use the same”. The courts have also made clear that this is to be understood that terms need not be any more clear than the subject matter may reasonably permit. In this regard, the specification was reviewed and it is not understood what specific changes the Examiner may have had in mind. It is also noted that the reviewing Attorney, Aaron C. Deditch (registration no. 33,865) has reviewed many hundreds of cases, which have been translated from German to English for

the same Assignee, Robert Bosch GmbH, and cannot recall such a blanket written description rejection being made and/or that was successful. It is therefore submitted that the present specification satisfies the written description requirement as to a person having ordinary skill in the art.

Still further, the Office bears the initial burden of presenting “evidence or reasons why persons skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims.” (See M.P.E.P. § 2163.04 (citing In re Wertheim 541 F.2d 257, 262, 265, 191 U.S.P.Q. 90, 96, 98 (C.C.P.A. 1976))) (emphasis added). The Manual of Patent Examining Procedure also provides that if an examiner rejects a claim based on the lack of a written description, the examiner should “identify the claim limitation not described” and also provide “reasons why persons skilled in the art would not recognize the description of this limitation in the disclosure of the application.” (See id.). Furthermore, while the specification as originally filed must provide a statutorily sufficient written description of the claimed subject matter to a person having ordinary skill, it does not matter exactly how this is done so long as the written description requirement is satisfied. To determine whether the written description requirement is satisfied, the specification as a whole must be considered. See In re Wright, 9 U.S.P.Q.2d 1649, 1651 (Fed. Cir. 1989) (citing In re Smith, 481 F.2d 910, 914, 178 U.S.P.Q. 620, 624 (C.C.P.A. 1973)).

As regards the foregoing, the Office Action does not explain why a person skilled in the art would not recognize the features of the claimed subject matter as to the written description.

With respect to paragraph six (6), claims 14 to 19, 24, 26 to 28 and 35 were rejected under 35 U.S.C. § 102(b) as anticipated by Egusa et al., U.S. Patent No. 5,237,405.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991). Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the

Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

It is respectfully submitted that all of the features are not identically described (or even suggested), so that claim 14 is allowable, as are its dependent claims.

The “Egusa” does not identically describe (or even suggest) the claim 14 feature in which a probability is determined that the image movement occurs without the additional movement nor that this probability is determined at different positions. Still further, “Egusa” does not identically describe that the position and dimensions of image regions are determined as a function of this probability. Hence, claim 14 is novel and therefore allowable, as are its dependent claims.

In particular, “Egusa” does not identically describe (or even suggest) how to determine a probability that the image movement occurs without the additional movement. The cited textual passage of the Office Action (column 33, lines 60 ff) only indicates that the reliability is determined as a function of the correlation value detection 303 and the moving object detection 309 (Figure 54). In the process, according to column 1, lines 54 through 67, the reliability assumes the values “0” or “1”, the reliability being “1” if a specified threshold level of judging condition is exceeded. This makes it clear that the reliability of “Egusa” taken by itself is not a probability, but merely a yes/no statement, and further it is not the probability as provided for in the context of claim 14, in which an image movement occurs without additional movement.

Rather, the reliability of “Egusa” merely indicates whether, taking into consideration a detected object movement, a “motion vector” is reliable or not (column 36, lines 16 through 48). The reliability of “Egusa” is not suitable for providing a statement regarding the probability that at a position of an image an image movement occurs without the additional movement, but rather the reliability of “Egusa” is merely understood to provide a statement as to whether a currently determined motion vector is usable when object movements are taken into consideration.

As further regards claim 14, “Egusa” does not identically describe (or even suggest) how to determine the position and dimensions of image regions as a function of this probability. At no point does “Egusa” identically describe (or even suggest) how to change the position and dimensions of the image regions. Rather, from column 45, lines 61 ff., “Egusa” only indicates that the object movement occurs at the center of the image and that therefore the weight coefficients are smaller. This, however, precisely leads away from the approach of claim 14, since in the “Egusa” approach, it is precisely the dimensions and the position of the image regions that are maintained and therefore only the weightings are changed.

Accordingly, claim 14 and its dependent claims are allowable.

As further regards dependent claim 24, “Egusa” does not identically describe (or even suggest) using block-displacement information from a *block-based encoding method*. Further, “Egusa” does not identically describe (or even suggest) using for each of the image regions the block-displacement information of blocks that lie within the respective image region. Accordingly, claim 24 is allowable for these further reasons.

Independent claim 26 includes features like those of claim 14 (including the determining of the probability, as provided for in the context of claim 14), and is therefore allowable for essentially the same reasons as claim 14.

New claims 36 and 37 do not add any new matter, and are supported by the present application, including the specification. Claim 36 includes the features of claims 14, 19 and 20 (but not claim 15), and is therefore allowable for the same reasons as claim 14, and essentially for the same reasons as claim 20. Claim 37 includes the features of claims 14, 18 and 24 (but not claim 15), and is therefore allowable for the same reasons as claim 14, and essentially for the same reasons as claim 24.

It is therefore respectfully submitted that all of claims 14 to 37 are allowable.

Conclusion

In view of the foregoing, it is believed that the objections and rejections have been obviated, and that claims 14 to 37 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, and that the present application issue as early as possible.

Respectfully submitted,
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Amendments to the Drawings:

Please replace the Figures 1 and 4 with the Figures 1 and 4 on the two accompanying Replacement sheets, which include Figures 1 to 4. Labels have been added to the blocks as suggested by the Examiner. No new matter is added and the Figures are supported by the present application, including the specification. Approval and entry are respectfully requested.